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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/893,293	06/26/2001	Eimar M. Boesjes	BOESJES5	2000

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EXAMINER

FISCHEITTI, JOSEPH A

ART UNIT	PAPER NUMBER
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3627

DATE MAILED: 01/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

  
**Office Action Summary**

Application No.

09/893,293

Applicant(s)

BOESJES ET AL.

Examiner

Joseph A. Fischetti

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 October 2004.  
2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 29-38 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 29-38 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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***Election/Restrictions***

Applicant's election without traverse of claims 29-38 in the reply filed on 10/29/04 is acknowledged.

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 29-38 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. These claims fail to incorporate the technological arts sufficiently to constitute a process of the useful arts. Specifically, in claim 29, the steps, reading, comparing, identifying, evaluating, determining and updating all need to be integrated to a computer system.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 29, 30, 31, 32, 33, 34, 35, <sup>31</sup>38 rejected under 35 U.S.C. 103(a) as being unpatentable over Kalyan et al. in view of Kutaragi et al. and Abbott et al.

Kalyan et al. disclose a method for acquisition, evaluation, inventory, distribution, and sale products. In particular Kalyan et al. disclose determining a purchase price for

a product to be offered by a seller, the purchase price being determined based on order/demand information for the data product in a data product order database see, e.g. Fig. 9. Kalyan et al. further disclose calculating a new component value for the next component e.g. takes into account updated inventory and re-calculates based on that update ( $P_{12} = P_1 - V_{1k}$ ) to effectively determining a re-sale price for the data product to be offered by the re-seller to a buyer based on his (product being out of supply) using the data product, the purchase price being determined based on order information (e.g. demand); Official notice is taken to the old and notorious step of updating inventory information in response to a purchase of the data product. The Kalyan et al. method relates to a supply chain wherein a product is sold and then resold as a component downstream and hence is deemed to address resale too. However the remainder of the claim limitations are not disclosed in Kalyan et al.

However, Kutaragi et al disclose reading data (specific title code) from a data product offered by an owner of the data product; comparing data read from the data product with data in a data product information database (registration database), identifying the data product (occurs when specific title matches the one in registration when the data product is identified as being listed in the data product information database. Also, Abbott et al. disclose quantitatively evaluating the integrity of a data set recorded on the data product and computing a data integrity rating for the data product by using (e.g. an age attribute evaluation see col. 13), which results in an age satisfied or age not satisfied rating for the data. It would be obvious to modify Kalyan et al. to include the features of both Kutaragi et al. and Abbott et al because the motivation

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being Kutaragi et al. will insure authentic products and Abbott et al will insure non outdated products will ultimate end up with a consumer.

Claims 30, 31 Kutaragi et al. discloses DVD or CD application and the use in Kalyan et al. of same would be that such media required a demand based pricing system. The motivations are restated and are herein restated for these claim(s).

Claim 32, Abbott et al. disclose an attribute not found condition which is read as a condition unreadable which is used in the rating. The motivations are same and are herein restated for these claim(s).

Claims 33,34 Abbott et al. disclose data product includes error correction codes (see col. 30 lines 7 et. seq. Abbott et al uses the existence of any such error codes line 46 calculates a rating value based on the received information. Regarding the feature of over-sampled rating as an attribute, official notice is taken regarding the known use of this feature as a quality control feature as evidenced by Saunders col. 3 lines 60 et seq. The motivations are same and are herein restated for these claim(s).

Claim 35, 37: Kutaragi et al. disclose verification software prompting a user to enter data product information for the data product into the data product information database (col. 8 lines 10-15 pulse data is generated for ID purposes) if none is found in registration. Regarding claim 37, whether the entire disc has the ID data encoded on it or whether each track is so encoded, is deemed a mere repetition of a single concept. The motivations are same and are herein restated for these claim(s).

Claim 38: the recitation of "enabling a buyer" to effect the capabilities of the proposed combination is not deemed a patentable feature. The motivations are same and are herein restated for these claim(s).

Claims 29, 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kalyan et al. in view of Kutaragi et al. and Abbott et al. as applied above, and further in view of Kocher. The above combination does not disclose scanning data of the product into a recognition database. But Kocher does disclose scanning objects to use as data in the future. It would be obvious to modify the Kutaragi et al. to include a direct scan of the media songs/shows into the registration data file to further comparison purposes, the motivation being the ease of data uploading using scanning techniques.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication should be directed to PRIMARY EXAMINER Joseph A. Fischetti at telephone number (703) 305-0731.

A handwritten signature in black ink, appearing to read "Joseph A. Fischetti", is written over the printed name of the examiner.